

**Amendments to the Claims:**

Claims 1-21 are pending in the application. Claims 1-7, 9-19 and 21 have been amended herein. Please note that all claims currently pending and under consideration in the referenced application are shown below. Please enter these claims as amended. This listing of claims will replace all prior versions and listings of claims in the application.

**Listing of Claims:**

1. (Currently Amended) A transmitter, comprising:  
a processor operative to control ~~a first~~ an initial transmission and retransmission of data;  
and  
a memory storage device operative for storing a plurality of computer-executable instructions to be executed by the processor comprising:  
a first set of instructions for receiving ~~a first~~ an initial transmission frame error rate and a retransmission frame error rate from a receiver;  
a second set of instructions for determining ~~a first~~ an initial transmission energy setpoint as a function of the ~~first initial~~ first initial transmission frame error rate and ~~a first~~ an initial transmission quality and exclusive of any retransmission framer error rate, wherein the determination of the ~~first initial~~ first initial transmission energy setpoint is responsive to an update trigger; and  
a third set of instructions for determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality, wherein the determination of the retransmission energy setpoint is responsive to the update trigger.
2. (Currently Amended) The transmitter of claim 1, wherein the ~~first~~ first initial transmission quality is measured by a received error indication signal.
3. (Currently Amended) The transmitter of claim 1, wherein the ~~first~~ first initial transmission energy setpoint and the retransmission energy setpoint are determined as traffic to pilot ratios.

4. (Currently Amended) The transmitter of claim 1, wherein the third set of instructions determines the retransmission energy setpoint as a function of the retransmission frame error rate, the retransmission quality, and the ~~first~~ initial transmission energy setpoint.

5. (Currently Amended) The transmitter of claim 4, wherein the third set of instructions determines the retransmission energy setpoint by adding a delta value to the ~~first~~ initial transmission energy setpoint.

6. (Currently Amended) In a wireless communication system, a method comprising:  
determining a ~~first~~ an initial transmission energy setpoint to achieve a ~~first~~ an initial transmission frame error rate in a ~~first~~ an initial transmission of data;

repeatedly adjusting the ~~first~~ initial transmission energy setpoint on occurrence of a ~~first~~ an initial transmission error in the ~~first~~ initial transmission at a processor and exclusive of any retransmission frame error rate, wherein the ~~first~~ initial transmission error is received from a receiver;

determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and

adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver.

7. (Currently Amended) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint as a function of the ~~first~~ initial transmission energy setpoint.

8. (Original) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint to achieve a desired frame error rate for retransmission.

9. (Currently Amended) The method of claim 6, wherein repeatedly adjusting the ~~first~~ initial transmission energy setpoint further comprises:

adjusting the ~~first~~ initial transmission energy setpoint to achieve a desired frame error rate for transmission.

10. (Currently Amended) The method of claim 6, wherein the ~~first~~ initial transmission frame error rate is greater than the retransmission frame error rate.

11. (Currently Amended) The method of claim 6, wherein the ~~first~~ initial transmission frame error rate and the retransmission frame error rate result in a desired total frame error rate.

12. (Currently Amended) The method of claim 6, wherein the ~~first~~ initial transmission frame error rate and the retransmission frame error rate are predetermined values.

13. (Currently Amended) The method of claim 6, wherein the ~~first~~ initial transmission frame error rate and the retransmission frame error rate are dynamic values.

14. (Currently Amended) A computer-readable medium encoded with computer executable instructions, comprising:

a first set of instructions for receiving a ~~first~~ an initial transmission frame error rate and a retransmission frame error rate from a receiver;

a second set of instructions for determining a ~~first~~ an initial transmission energy setpoint as a function of the ~~first~~ initial transmission frame error rate and a ~~first~~ an initial transmission quality and exclusive of any retransmission framer error rate, wherein the determination of the ~~first~~ initial transmission energy setpoint is responsive to an update trigger; and

a third set of instructions for determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality, wherein the determination of the retransmission energy setpoint is responsive to the update trigger.

15. (Currently Amended) The computer-readable medium of claim 14, wherein the ~~first~~ initial transmission quality is measured by a received error indication signal.

16. (Currently Amended) The computer-readable medium of claim 14, wherein the ~~first~~ initial transmission energy setpoint and the retransmission energy setpoint are determined as traffic to pilot ratios.

17. (Currently Amended) The computer-readable medium of claim 14, wherein the third set of instructions determines the retransmission energy setpoint as a function of the retransmission frame error rate, the retransmission quality, and the ~~first~~ initial transmission energy setpoint.

18. (Currently Amended) An apparatus, comprising:

means for determining a ~~first~~ an initial transmission energy setpoint to achieve a ~~first~~ an initial transmission frame error rate in a ~~first~~ an initial transmission of data;

means for repeatedly adjusting the ~~first~~ initial transmission energy setpoint on occurrence of a ~~first~~ an initial transmission error in the ~~first~~ initial transmission and exclusive of any retransmission frame error rate, wherein the ~~first~~ initial transmission error is received from a receiver;

means for determining a retransmission energy setpoint to achieve a retransmission frame error rate in a retransmission of the data; and

means for adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver.

19. (Currently Amended) The apparatus of claim 18, wherein the means for adjusting the retransmission energy setpoint further comprises:

means for adjusting the retransmission energy setpoint as a function of the ~~first~~ initial transmission energy setpoint.

20. (Previously Presented) The apparatus of claim 18, wherein the means for adjusting the retransmission energy setpoint further comprises:

means for adjusting the retransmission energy setpoint to achieve a desired frame error rate for retransmission.

21. (Currently Amended) The apparatus of claim 18, wherein the means for repeatedly adjusting the ~~first~~ initial transmission energy setpoint further comprises:

means for adjusting the ~~first~~ initial transmission energy setpoint to achieve a desired frame error rate for transmission.